Sec. 52-14. Fuel-energy tax.

(a) A tax is levied and imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.

The County Council must set the rates for various forms of fuel and energy by resolution adopted according to the requirements of Section 52-17(c). The Council may, from time to time, revise, amend, increase, or decrease the rates, including establishing different rates for fuel or energy delivered for different categories of final consumption, such as residential or agricultural use. The rates must be based on a weight or other unit of measure regularly used by such persons in the conduct of their business. The rate for each form of fuel or energy should impose an equal or substantially equal tax on the equivalent energy content of each form of fuel or energy for a particular category of use. The tax does not apply to the transmission or distribution of electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in interstate commerce through the County if the tax would exceed the taxing power of the County under the United States Constitution. The tax does not apply to fuel or energy converted to another form of energy that will be subject to a tax under this Section. The tax must not be imposed at more than one point in the transmission, distribution, manufacture, production, or supply system. The rates of tax apply to the quantities measured at the point of delivery for final consumption in the County.

- (b) Person as used herein shall mean any individual, corporation, company, association, firm, copartnership, or any group of individuals acting as a unit, and includes any trustee, receiver, assignee or personal representative thereof.
- (c) Every person who transmits, distributes, manufactures, produces, or supplies fuel or energy in the County must pay the tax and report any information required by the Director of Finance for each calendar month on or before the fifteenth day of the following month. With the written permission of the Director of Finance, a person who regularly owes taxes under this Section may pay the tax and make reports on a quarterly basis, on or before the fifteenth day of April, July, October, and January in each year for the preceding 3 months.
- (d) If any person shall fail or refuse to remit the tax required to be paid hereunder or to make a proper return to the director of finance within the time and in the amount specified herein, he shall be liable for interest on the amount of tax due at the rate of one-half of one (1) percent per month on the amount of the tax for each month or portion thereof from the date upon which the tax is due as provided herein, and shall also be liable for a penalty of ten (10) percent of the amount of the tax, and such interest and penalty shall be collected as a part of the tax.
- (e) If any person shall fail or refuse to make any report and remittance required herein, within the time provided herein, the director of finance shall proceed in such manner as he may deem necessary to obtain facts and information on which to base his estimate of the tax due. As soon as the director of finance shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make such report and remittance, he shall proceed to determine and assess against such person the tax and penalties provided for herein and shall notify such person by mail sent to his last known place of address of the total amount of such tax, interest and penalties, and the total amount thereof shall be payable within ten (10) days from the date of such notice.
- (f) It shall be the duty of every person liable for the payment to the county of any tax imposed herein to keep and preserve, for a period of two (2) years, such suitable records as may be necessary to determine the amount of such tax as he may have been liable for the county, which records the director

of finance shall have the right to inspect at all reasonable times.

- (g) Whenever any person required to pay to the county a tax hereunder shall cease doing business or otherwise dispose of his business, any tax payable hereunder to the county shall become immediately due and payable and such person shall immediately make a report and pay any tax due.
- (h) The Director of Finance may issue regulations to assess, collect, audit, and otherwise administer the tax imposed by this Section. If the Council by resolution establishes different rates for different categories of fuel-energy use, the regulations may specify how the Director will determine whether a taxpayer qualifies under the resolution for any rate that is less than the maximum rate.
- (i) Any person violating or failing to comply with any of the provisions of this section shall be subject to punishment for a class A violation as set forth in section 1-19 of chapter 1 of the County Code. Each violation shall constitute a separate offense. Such conviction shall not relieve any such person from the payment, or remittance of such tax. (1971 L.M.C., ch. 52, § 1; Res. No. 8-238; 1983 L.M.C., ch. 22, § 56; 2003 L.M.C., ch. 28, § 1; Res. No. 15-412.)

Sec. 52-15. Telephone tax.

- (a) (1) A person who owns a telephone line for the reception, transmission or communication of messages by telephone, or leases, licenses, or sells telephonic communication in the County must pay a tax on the following services furnished to customers with a billing address or fixed service address in the County:
- (A) each residence, business, or PBX local exchange access line or trunk line (except telephone lifeline service customers);
 - (B) each wireless telephone line; and
 - (C) each Centrex local exchange access line or trunk line.
- (2) The Council must by resolution adopted after advertisement and public hearing in accordance with Section 52-17(c) set the monthly tax rate for each type of line listed in paragraph (1). A person subject to the tax imposed under this section must pay a tax equal to the sum of each line multiplied by the tax rate for that line.
 - (b) In this section:
- (1) Line means a connection to the local telephone exchange through a unique telephone number.
- (2) *Person* means any individual, corporation, company, association, firm, or co-partnership, or any group of individuals acting as a unit, and includes any trustee, receiver, assignee or personal representative.
 - (3) Wireless telephone means any equipment or instrument that transmits:
 - (A) cellular telephone service;
 - (B) personal communication service; or

- (C) any other commercial mobile radio service as defined by the Federal Communications Commission.
- (c) Every person liable for the tax must pay the tax and must report upon such forms and set forth such information as the director of finance may prescribe. The report and payment of the tax must be made on or before the fifteenth day of each month, covering the immediate preceding calendar month. Any person liable for the tax may, upon written application to and with the consent of the Director of Finance, make reports and remittances on a quarterly basis instead of the monthly basis. Quarterly reports and remittance must be made on or before the fifteenth day of April, July, October and January in each year, and must cover the three (3) immediately preceding months.
- (d) If any person fails or refuses to remit the tax required to be paid or to make a proper return to the director of finance, within the time and in the amount specified, that person is liable for:
- (1) Interest on the amount of tax due at the rate of one (1) percent per month for each month or part of a month after the date upon which the tax is due; and
- (2) A penalty of five (5) percent of the amount of the tax per month or part of a month, not to exceed a total of twenty-five (25) percent of the tax. The interest and penalty is collected as a part of the tax.
- (e) If any person fails or refuses to make any report and remittance required within the time provided, the Director of Finance must obtain information on which to base the Director's estimate of the tax due. As soon as the Director obtains sufficient information upon which to base the assessment of any tax due, the Director must assess against the person the tax and penalties. The Director must notify the person by mail sent to the person's last-known place of address of the total amount of the tax, interest and penalties. The total amount is payable within ten (10) days after the date of the notice.
- (f) Every person liable for the payment of any tax must keep and preserve, for two (2) years, suitable records necessary to determine the amount of the tax as that person may have been liable for to the County. The Director of Finance may inspect the records at all reasonable times.
- (g) Whenever any person subject to tax stops doing business or otherwise disposes of the business, any tax payable to the County is immediately due and payable and the person must immediately make a report and pay any tax due.
- (h) A person is entitled to a refund, under procedures in State law, of the tax paid on any wireless telephone line billed to an address in the County for wireless telephone service that is not available in the County.
- (i) Any violation or failure to comply with this section is a class A violation. Each violation is a separate offense. A conviction does not relieve any person from the payment, collection or remittance of the tax. (1971 L.M.C., ch. 51, §§ 1, 2; Res. No. 8-239; 1983 L.M.C., ch. 22, § 56; 1989 L.M.C., ch. 18, § 1; Res. No. 12-193; 1996 L.M.C., ch. 17, § 2.)

Editor's note-Section 1 of 1989 L.M.C., ch. 18, amended § 52-15 in its entirety. Section 2 of the act reads as follows: Sec. 2. Rate of Tax. The rate of the tax levied under section 52-15 from January 1, 1984 until the effective date of this act [January 23, 1989] is 62 cents per month on each residence, business or PBX local exchange access line or trunk line furnished to customers within the County, and 6.2 cents per month on each Centrex local exchange access line or trunk line furnished to customers

within the County.

Resolution No. 12-193, adopted May 8, 1991, effective May 1, 1991, amended the rates of the telephone tax levied under Section 52-15 as follows: \$1.25 per month on each residence, business or PBX local exchange access line or trunk line furnished to customers (except telephone lifeline services customers) in the County; and 12.5 cents per month on each Centrex local exchange access line or trunk line furnished to customers in the County. This resolution expired on June 30, 1995.

Sec. 52-16. Room rental and transient tax.

- (a) (1) The Director of Finance must impose on each transient a tax at the rate of 7 percent of the total amount paid for room rental, by or for the transient, for sleeping accommodations in any hotel or motel that is located in the County.
- (2) The County Council by resolution, after a public hearing advertised under Section <u>52-17</u>(c), may increase or decrease the rate of this tax.
 - (b) The following words and phrases, when used in this Section, have the following meanings:

Transient: An individual who, for any period of 30 or fewer consecutive days, actually occupies a sleeping accommodation.

Broker: A person, other than the owner or operator of a hotel or motel, that receives payment for hotel or motel accommodations from a transient who is subject to tax under subsection (a).

Hotel or motel:

- (1) Any hotel, inn, hostelry, tourist home or house, motel, apartment hotel, rooming house, or other lodging place that offers for compensation sleeping accommodations in the County to 5 or more transients at any one time.
 - (2) A hotel or motel does not include:
- (A) a hospital, medical clinic, nursing home, rest home, convalescent home, assisted living facility, or home for elderly individuals; or
- (B) a facility owned or leased by an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code if the primary use of the facility is other than housing overnight guests.

Hotelkeeper: A person that:

- (1) owns or operates a hotel or motel; or
- (2) acts as a broker.

Room rental: The total charge paid by a transient for a sleeping accommodation. Room rental does not include any charge for services in addition to the charge for the use of sleeping space. The portion of the total charge, if any, that represents other than room rental must be separately billed.

Director: Director of Finance or the Director's designee.

- (c) Every hotelkeeper that receives any payment for a room rental that is subject to a tax under this Section must collect the amount of tax imposed under subsection (a) when payment for the room rental is made. The hotelkeeper must hold the taxes required to be collected by this Section in trust for the County until remitted as required by this Section.
- (d) (1) Each hotelkeeper must file a report on a form supplied by the Director. The form must show the amount of room rental payments collected, the amount of tax required by this Section to be collected, and any other information the Director requires to assure that the proper tax has been remitted to the County.
- (2) Unless the Director accepts a quarterly report, each hotelkeeper must file a report on or before the last day of each month showing all room rentals during the preceding month.
- (3) If a hotelkeeper requests, the Director may, in the Director's sole discretion, accept a quarterly report showing all room rentals during the 3 months immediately before the month when the report is due. Each hotelkeeper so approved must file a quarterly report on or before the last day of April, July, October, and January.
 - (4) Each hotelkeeper must remit the full amount of tax due with each report
- (e) If any hotelkeeper does not remit to the Director the tax required to be paid by this Section, or does not file a timely report to the Director, the Director must add to the tax due:
- (1) interest at the rate of one percent per month on the amount of the tax for each month or part of a month after the tax is due until the tax is paid and the report is files; and
- (2) a penalty of 5 percent of the amount of the tax per month or part of a month, not to exceed a total of 25 percent of the tax, until the tax is paid and the report filed.
- (f) (1) If a hotelkeeper does not file a required report by the deadline established under subsection (d), the Director may estimate the amount of tax due. The Director may base the estimate on a reasonable projection of room rentals, and may consider rentals reported by other hotelkeepers.
- (2) The Director must send a notice of the estimated tax due, including interest and penalty, to the hotelkeeper's last known address. The hotelkeeper must pay the estimated tax, including any interest and penalty, assessed by the Director within 10 days after the notice is sent.
- (g) (1) Each hotelkeeper must preserve, for 3 years, all records necessary to determine the amount of the tax due under this Section.
- (2) The Director may inspect any records required to be kept under this Section at any reasonable time.
- (h) If a hotel or motel stops doing business or a hotelkeeper disposes of its business, the hotelkeeper must immediately file a report under subsection (d) and pay any tax due.
- (i) Each hotelkeeper or transient that does not comply with any provision of this Section has committed a class A violation. A finding of violation under this subsection does not relieve any

hotelkeeper or transient of any tax, including any applicable interest or penalty, due under this Section.

(j) At least 3.5% of the revenue from the tax levied under this Section must be used for the Conference and Visitors Bureau, Inc., as designated by the Council in a budget resolution to promote travel to the County. The County Executive must report to the Council on the use of these funds by March 15 each year. (1975 L.M.C., ch. 38, § 1; 1983 L.M.C., ch. 22, § 56; 1984 L.M.C., ch. 38, § 1; 1987 L.M.C., § 24, § 1; CY 1991 L.M.C., ch. 11, §§ 1 and 4; CY 1991 L.M.C., ch. 25, § 1; 1994 L.M.C., ch. 7, § 1; Council Resolution No. 13-524; 2009 L.M.C., ch. 14, § 1.)

Editor's note— The U.S. Court of Appeals upheld the constitutionality of this statute in <u>United States v. Montgomery County</u>, 761 F.2d 998 (4th Cir. 1985).

See County Attorney Opinion dated <u>6/17/04-B</u> describing the procedures for approving a tax rate change for admissions and amusements.

1984 L.M.C., ch. 38, § 3 provides as follows: Sec. 3. This Act shall apply to:

- (a) All taxes paid within three years prior to the effective date of this Act.
- (b) All taxes due and/or assessable for periods within four years prior to the effective date of this Act.
- (c) All taxes due, payable, billed or assessed where legal action has been instituted and is pending on the effective date of this Act.